

Testimony of Robert Corn-Revere
on
S. 876, The Children's Protection from Violent Programming Act
Before the
Subcommittee on Communications
Senate Committee on Commerce, Science and Transportation
May 18, 1999

Summary

S. 876, the Children's Protection from Violent Programming Act, proposes sweeping restrictions on television programming.

- It would prohibit the distribution of any "violent video programming" on broadcast or cable television channels during hours when children are reasonably likely to be in the audience;
- Assuming the FCC adopted the same time channeling approach under S. 876 that it uses to regulate broadcast indecency, the law would ban "violent" programming from 6 a.m. to 10 p.m. -- two-thirds of the broadcast day;
- S. 876 would impose this restriction on every television household in the United States in the name of protecting children even though Census Bureau data reveals that no minors reside in two-thirds of American homes. Accordingly, it is significantly overbroad.

The restrictions on speech that would be imposed by S. 876 raise profound First Amendment questions.

- Courts at all levels, from the United States Supreme Court and United States Courts of Appeals, to courts in the various states, have held that violent expression is constitutionally protected. As the Tennessee Supreme Court noted, "every court that has considered the issue has invalidated attempts to regulate materials solely based on violent content, regardless of whether that material is called violence, excess violence, or included within the definition of obscenity";
- No court has ever approved the "safe harbor" approach for broadcast indecency upheld in *FCC v. Pacifica Foundation* to violent programming. Doing so would represent a very significant expansion of government authority over television programming that reviewing courts would be most unlikely to approve;
- S. 876 would significantly expand governmental control over other electronic media, such as cable television. Far from supporting this expansion of programming regulation, recent Supreme Court authority holds that such direct control over cable programming would likely be found unconstitutional, and that voluntary measures and technological solutions that foster individual

empowerment are constitutionally preferred. *Denver Area Educational Telecommunications Consortium v. FCC.*

Even assuming that social science research has established that some types of programming influence violent behavior, it cannot reliably determine which programs should be censored or help create workable rules.

- After a review of the available scientific literature, Chief Judge Harry Edwards of the United States Court of Appeals for the District of Columbia Circuit wrote that he could not imagine how regulators “can distinguish between harmless and harmful violent speech,” and that “no proposal overcomes the lack of supporting data.”
- Separating “good” violence from “bad” violence is a highly subjective judgment that cannot be accomplished realistically by imposing “safe harbor” rules. The 1997 UCLA Television Violence Report, for example, noted that if all violence were eliminated, “viewers might never see a historical drama like *Roots*, or such outstanding theatrical films as *Beauty and the Beast*, *The Lion King*, *Forrest Gump* and *Schindler’s List*.” The National Television Violence Study similarly reported that “not all portrayals of violence are the same.” Both reports list myriad factors to explain a preference for some violent programs over others, but to incorporate these theoretical choices into public policy would require micromanagement of program production and would be utterly unworkable.
- The exceptions to the violence “safe harbor” in S. 876 help illustrate the subjectivity of the choices that would be made:
 - ♦ The law would empower (but not require) the FCC to exempt news programs from the ban on violent programming. Restricting news coverage, whether it involves local crime, the use of napalm on Vietnam villages or bombing raids in Kosovo, goes to the heart of First Amendment protections. Yet at the same time, at least one researcher from the National Television Violence Study announced research findings that news programs can cause “elevated fears among children” and advocated extending V-chip requirements to cover news broadcasts.